NO. 79-6794

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

DEWEY COLEMAN,

Petitioner,

-v-

SENTENCE REVIEW DIVISION OF
THE SUPREME COURT OF MONTANA,

Respondent.

On Writ Of Certiorari To The
Supreme Court Of Montana

RESPONDENT'S BRIEF IN OPPOSITION

APPEARANCES:

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COUNSEL FOR RESPONDENT

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RESPONDENT'S BRIEF IN OPPOSITION

The respondent respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the Montana Supreme Court's Order on Application for Writ of Supervisory Control. A copy of the order is appended to the petition.

REASONS WHY THE WRIT SHOULD BE DENIED

1. The petition does not raise a substantial federal question.

Petitioner's ex post facto contention is based on the fact that the procedure for appellate review in the Montana capital-sentencing system was changed in 1977 to provide for automatic review by the supreme court of Montana in place of the review previously afforded by a division of the supreme court. The substitution of the supreme court in the capital-sentencing system followed this Court's decision in Gregg v. Georgia, 428 U.S. 153 (1976), and is consistent with the principles stated in that opinion.

Dobbert v. Florida, 432 U.S. 282, 293 (1977), disposes of petitioner's ex post facto claim by recognizing that

"[e]ven though it may work to the disadvantage of a defendant, a procedural change is not ex post facto." The change did not affect the crime for which petitioner was convicted, the punishment prescribed for that crime, or the quantity or degree of proof required to convict. In short, petitioner's claim does not raise a federal question, but only a matter of procedure within the discretion and authority of the State of Montana.

CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted this 18th day of July 1980.

MICHAEL T. GREELY
Attorney General
State of Montana
State Capitol
Helena, Montana 59601

JOHN S. FORSYTHE
Rosebud County Attorney
Forsyth, Montana 59327

By Michael T. Greely
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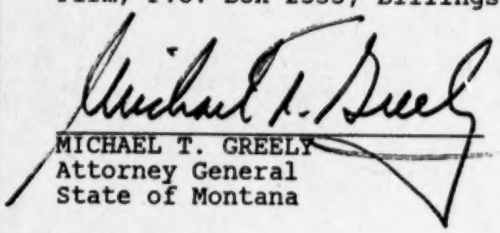
CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of July 1980 a copy of Respondent's Brief in Opposition to Certiorari was mailed, postage prepaid, to Charles F. Moses, Moses Law Firm, P.O. Box 2533, Billings, Montana 59103.



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State of Montana